

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>JOHN JOSEPH HENDERSON #222287,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 7:04-CV-00622</b>
	)	
<b>WARDEN D.A. BRAXTON, OFFICER</b>	)	<b>By: Michael F. Urbanski</b>
<b>BENTON, <u>et al.</u>,</b>	)	<b>United States Magistrate Judge</b>
<b>Defendants.</b>	)	

**REPORT AND RECOMMENDATION**

Plaintiff John Joseph Henderson, currently an inmate in the Virginia prison system, has filed a lawsuit under 42 U.S.C. § 1983 alleging several violations of his constitutional rights. Plaintiff contends that his life is in danger at Red Onion State Prison (“Red Onion”) where he is currently incarcerated and filed two motions for preliminary injunction seeking transfer. The court referred this matter to the undersigned for report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), and the matter is before the court on plaintiff’s two motions seeking preliminary injunctive relief (Docket No. 35 & 43).

Plaintiff’s first motion requests transfer away from an inmate named Scott, who, plaintiff contends had threatened to kill him. After plaintiff filed his first motion, and after the court ordered defendant to respond to it by filing papers with the court, plaintiff was moved to a different pod in Red Onion away from inmate Scott. Plaintiff alleges that prison officials harassed him and searched his cell. See (April 9, 2005 motion at 2.) Based on this conduct, plaintiff filed a motion with the court asking for a preliminary injunction ordering prison officials to transfer him to another institution for reason of his safety. Id. at 3-4, 6.

An evidentiary hearing was held on the record on May 6, 2005, at which the plaintiff and counsel for defendant appeared by videoconference. At the outset of the hearing, plaintiff announced

that he has discussed his concerns regarding his safety with Chief of Program Supervision Taylor and Lt. Younts, and that he was entirely satisfied by their response to his concerns. Plaintiff also noted his appreciation for the manner in which his cell pod transfer was handled. As a result, plaintiff stated that he wished to voluntarily dismiss the lawsuit as he is satisfied with the institutional response to his concerns. Plaintiff stated at the hearing that he wanted both the motions for preliminary injunction and the lawsuit dismissed in their entirety.

Defendants, by counsel, stipulated their agreement to the voluntarily dismissal of this action.

Accordingly, it is recommended that this case be dismissed pursuant to Rule 41(a)(2) without prejudice.

The Clerk is directed immediately to transmit the record in this case to the Hon. Samuel G. Wilson, United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note any objections to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1)(C) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection.

The Clerk of the Court hereby is directed to send a certified copy of this Report and Recommendation to all counsel of record.

**ENTER:** This 6<sup>th</sup> day of May, 2005.

/s/ Michael F. Urbanski  
UNITED STATES MAGISTRATE JUDGE